

date, unless Verizon plans to build the network interconnection point). And last, but not least, the above-quoted provisions make it very clear that, even by the Handbook's terms, NCC was not obligated to provide an initial trunking forecast setting forth its trunking needs for the next 2 years, when it participated in the January 2001. network design and planning calls.

c. NCC was not obligated to provide a 2-year "A Location/Z Location" trunking forecast either.

Verizon's assertion that it properly refused to interconnect with NCC at the 405 MUX because NCC failed to provide a 2-year, "A Location/Z Location" forecast fares no better than its argument about the lack of a "transport capacity" forecast from NCC

At least Verizon can point to the ICA as the basis for its claim that an "A Location/Z Location" forecast was required from NCC. Unlike the "traffic capacity" forecast, the MCI Im 1C.4 required NCC to provide this particular forecast. See MCI Im ICA, Attachment 4, Section 4.1.1, generally, and Section 4.1.1.2, in particular. The agreement provides, in pertinent part:

Intercompany forecast information must be provided by [MCI metro] to [Verizon] on a quarterly basis. The forecasts shall include:

*4.1.1.1 Yearly forecasted trunk quantities to each of [Verizon's] End Offices and access Tandem Office(s) affected by the exchange of traffic (which include measurements that reflect actual Tandem and End Office Local Interconnection and meet point trunks and tandem-subtending Local Interconnection End Office equivalent **trunk** requirements for no more than two years (current plus one year) by traffic type (local/toll, operator services, 911, etc.), Access Carrier Terminal Location ("ACTL"), interface type (e.g., DSI), and trunks in service each year (cumulative)*

4.1.1.2 The use of A Location/Z Location Common Language Location Identifier ("CLLI-MSG"), which are described

in Bellcore documents BR 795-100-100 and BR 795-400-100

...

Verizon Exh. 4B (emphasis added).

Despite Verizon's assertions; the above-quoted language does not require, as a rule, 2 years worth of trunking data – that is simply Verizon's admittedly wrong interpretation of the JCA's plain language. A plain reading of the MCIm JCA provisions in issue reveals that yearly forecasted *trunk* quantities, identified in the A Location/Z Location CLLJ-MSG, may be required for up to 2 years (current + 1), *but not more than 2 years*. In other words, trunking forecasts for something less than 2 years *are* allowed under the MCImetro JCA. On cross examination by Staff, Verizon's witness, Don Albert, admitted this point:

Q The A to Z forecast as provided in July of 2001, that's what you're talking about as what was required by the interconnect agreement?

A Right. That's what's there and described in detail in 4.1.1.1. Those are the details and the timing is in 4.1.2.1.

Q Now I think -- I know that somewhere in the testimony there is this discussion of a two year forecast, correct? That what Verizon needed was a two year forecast of its *trunk* needs?

A Correct

Q I believe that the testimony or the record is that was required by NCC's interconnect agreement?

A Right. It says it right here in 4.1.1.1

Q No a I know you're not a lawyer, and lawyers love to parse words and figure out meanings of words, but I want to turn your attention to the following language in Section -- the last sentence, if you will, Section 4.1.1, **and then the** following language in Section 4.1.1.1, okay? . . . See where it says for no more than two years?

A Yes.

Q Okay. Am I correct in reading that as meaning that you're not going to require three years?

A Correct.

Q Am I correct in reading that as, you won't require more than two years?

A Correct.

Q Could I read that to mean that you could require less than two years?

A I don't know. I never had looked at it that way.

Q . . . Is that fair to read it that way?

A I mean, you could probably read it that way. Like I said, I was one of the three engineers that negotiated this, and working with MCI, the intent was two years.

Q But at least what the language says in the agreement is no more than two years.

A That's what it says.

Tr. III, at 174-176 (emphasis added).

Verizon will probably argue that Staff's reading of the language in the MCI-Verizon ICA is hyper technical. But the fact is, the agreement plainly says "no more than two years" -- as Mr. Albert concedes. And there are 2 other important points to make here. First, if any **party to** this proceeding is guilty of hyper technical readings of the requirements of the MCI-Verizon ICA, *or* the CLEC Handbook, it is Verizon. It has justified, throughout this proceeding, its refusal to Interconnect with NCC at the 405 MUX on hyper technical readings of the MCI-Verizon agreement and its CLEC Handbook.

Verizon may also argue that the Commission should consider the parties' intent when negotiating the provisions of the MCI agreement at issue. Likewise, the Commission should not go down that path. For one thing, MCI is not a party to the proceeding, and it may have had a different intent than Mr. Albert (given the plain language of the agreement, Staff suspects would be likely). But more importantly, NCC had no idea what MCI and Verizon "intended" when ~~the~~^{he} drafted the particular provision of the agreement. NCC simply opted into a preexisting agreement. It has the right to rely on the plain language of that agreement's provisions, not the *original* parties' (undisclosed) intent.

Thus, Verizon cannot base its refusal to accommodate NCC's request to interconnect at the 405 MUX on NCC's failure to provide 2-years' worth of data. But that still leaves the issue of whether NCC provided its trunking estimate in **A** Location/Z Location CLLI-MSG format, as required by Bellcore documents BR 795-100-100 and BR 795-400-100. See VZ Exh. 3B. The evidence establishes that it did.

Staff contacted Bellcore (nka, Telcordia), obtained non-proprietary abstracts of the documents and discussed their requirements with Telcordia's network engineer. **A** copy of Telcordia's email forwarding the abstracts ~~is~~ attached as Appendix C.

According to the abstracts, and Telcordia's explanation of them, the first document, BR 795-100-100 provides the methods whereby carriers designate their relevant switching points using CLLI Codes.¹¹ The second document, BR 795-400-100, provides the methodology for

¹¹CLLI Codes are defined as: "Pronounced silly code. An alphanumeric code of up to 38 characters. CLLI was developed by Bellcore (now Telcordia) as a method of

identifying not only the switching points' CLLI Codes; but also the CLLI Codes for the trunks that will connect these switching points. In other words, the CLLI code for all switching points along a given telecommunications path, and the trunks connecting them -- from points A to Z. There's nothing more complicated about it than that.

The record demonstrates that NCC provided nearly all the information required in an "A Location/Z Location" trunking forecast in its January 17, 2001, and January 25, 2001, initial, 6-month *trunking estimate*. NCC Exh. 3C-005; NCC Exh. 3C-008. NCC gave Verizon the CLLI Code for NCC's switch at 405 Capitol (**A Location**), identified the CLLI Code for Verizon's Charleston tandem where 28 trunks would go (Z Location), advised Verizon it needed 5 more T-Is to go to the other 5 Verizon tandems in the Charleston LATA (Z locations, no code provided), and gave the circuit identification code for 1 of the DS3 *trunks* serving the 405 MUX (explaining that NCC did not have the CLLI Code for the MUX itself). Id

Any information that NCC did not provide was in Verizon's possession and was readily ascertainable by Verizon. This is not a trivial observation, either. The FCC clearly places the burden on Verizon (the ILEC) to provide NCC (the CLEC) with general information regarding its network. In its August 8, 1996, order, establishing rules governing local competition, the

identifying physical locations and equipment such as buildings, central offices, poles, and antennae. Consider the real-life example of NYCMNY18DS0. The first four characters identify the place name (NYCM is New York City Manhattan). The following two characters identify the state: region or territory (NY is New York). The remaining five characters identify the specific item at that place (18DS0 is the AT&T 5E Digital Serving Office on West 18th Street). Phone companies use CLLI Codes for a variety of purposes, including identifying and ordering private lines. . . . Newton's Telecom Dictionary, 187 (16th Ed., 2000).

FCC wrote, with respect to interconnection:

incumbent LECs possess the information necessary to assess the technical feasibility of interconnecting to particular LEC facilities. Further, incumbent LECs have a duty to make available to requesting carriers general information indicating the location and technical characteristics of incumbent LEC network facilities. Without access to such information, competing carriers would be unable to make rational network deployment decisions and could be forced to make inefficient use of their own and incumbent LEC facilities, with anticompetitive effects.

Local Competition 1st R&O, ¶205 (emphasis added). In the case of NCC's efforts to interconnect with Verizon, the FCC's observations proved prophetic.

- d. In any event, Verizon rejected NCC's request to interconnect at the 405 MUX without either a "transport capacity" or an "A Location/Z Location" forecast.**

In any event, the record establishes that Verizon rejected NCC's request to interconnect at the 405 MUX on January 31, 2001, at the latest — more than a month before the "transport capacity" forecast was received, and more than 5 months before it received NCC's "A Location/Z Location" trunking forecast.

It is undisputed that Verizon did not receive NCC's "transport capacity" forecast from NCC until March 1, 2001. Verizon Exh. 4.4, at 5 & Exhibit. At that time, NCC forecast its total transport capacity demand to be far in excess of what it initially indicated in its January 2001, 6-month forecast, and well in excess of the available capacity on the 405 MUX. Verizon seized upon this fortuitous, ill-advised action by NCC to support its actions, claiming that: "As a result of this [March 1, 2001] forecast, [we] initiated the design and construction of a new dedicated [interoffice facility] fiber optic system" to interconnect the 2 companies' networks.

Verizon Exh. 4A, 5. Mr. Albert's assertion flies in the face of the evidence and is contradicted by Verizon's own testimony.

The evidence makes it clear that Verizon rejected NCC's request to interconnect at the 405 MUX on January 31, 2001, if not earlier. First, there is the testimony of NCC's president, Mr. Lesser, who was a party to both conference calls between the parties in January (Mr. Albert was not) testified that Verizon advised NCC during the 2 interconnection design conference calls (January 24 & 31, 2001), that NCC could not interconnect at the 405 MUX. NCC Exh. 3F, ¶5; Tr. II, at 238. According to Mr. Lesser, during the January 24, 2001, conference call, Verizon indicated that NCC could not interconnect at the 405 MUX, but nonetheless requested more information verifying capacity on the facility. Tr. I, at 198-199. This was corroborated by Ms. McKernan. Tr. II, at 220-221¹² NCC provided the information on January 25, 2001. NCC Exh. 3C-008.

A follow up conference call was held on January 31, 2001. Mr. Lesser testified that, during this call, Verizon clearly, and unconditionally, refused to interconnect at the 405 MUX and advised NCC that it would either have to collocate, or interconnect via dedicated entrance facilities provided either by Verizon or another carrier. Tr. II, at 220-222; NCC Exh. 3F, ¶5.

Mr. Lesser's testimony is corroborated by that of Verizon's Ms. McKernan – also

"During the hearing, Commissioner Lane asked Verizon's Ms. McKernan whether it was not absurd that the company would require a CLEC to verify available capacity on Verizon's own facility. Tr. II, at 280-283. Ms. McKernan "saw the point". Tr. II, at 283. Staff, likewise, finds Verizon's demand that NCC confirm the available capacity on the 405 MUX to be absurd. More importantly: it is clearly at odds with the FCC's rules. Local Competition 1st R&O, ¶205.

unlike Mr. Albert, a participant on *the* January conference calls. In her October 24, 2001, affidavit filed in Maryland involving a similar dispute between Verizon and a different CLEC, Ms. Kernan stated, unequivocally that:

During the call, Mr. Lesser requested that Verizon use an existing outside plant multiplexing facility (in his words “entrance facility”), that was currently being used to serve Verizon retail customers, to provide NCC with interconnection. Mr. Lesser was advised that Verizon uses only dedicated entrance facilities for the installation of interconnection trunks with carriers. At that time, Mr. Lesser was given the option of leasing a dedicated entrance facility from Verizon or collocating at Verizon’s central office for interconnection. Mr. Lesser insisted that Verizon use the third party’s entrance facility to provide him interconnection.

NCC Exh. 3F. ¶5

On cross examination during the hearing before the Commission, Ms. McKernan ratified her affidavit and elaborated upon it further. She testified that Mr. Lesser was advised by Verizon’s “technical support people” (Cynthia Robinson and Joseph D’Marino) during the January 24, 2001, conference call, that Verizon uses only dedicated entrance facilities for the installation of interconnection *trunks* for carriers. Tr. II, at 238. During cross examination by Staff, Ms. McKernan identified Cynthia Robinson as the “interconnection manager who actually does the provisioning and installation of the trunks” between Verizon’s switches and the CLEC. *Id.* at 263. Joseph D’Marino was identified as the “technical support advisor the person that works with the CLEC on the actual . . . technical requirements, the ins and outs of actually making this stuff work”. *Id.* at 264. Ms. McKernan further testified that she would not argue with the technical support persons’ statements because she “wouldn’t know any better”. *Id.* at 238

Moreover, in her Maryland affidavit, after noting that Mr. Lesser insisted on using the 405 MUX for interconnection, Ms. McKernan states that, “in February or early March, NCC agreed to have Verizon construct dedicated entrance facilities to provide interconnection. NCC Exh. 3F. ¶6. Obviously, there must have been a choice presented to NCC by Verizon prior to March 1, 2001, when NCC submitted its “transport capacity” forecast to Verizon. This assumption is borne out by Mr. Lesser’s confession that he “overstated” his traffic needs in the March 1, 2001, forecast in order to avoid Verizon building too small a dedicated entrance facility NCC Exh. 1 . at 10.¹³

In addition, Mr. Albert’s claim that Verizon decided to design and build a dedicated entrance facility only after it had received the March 1, 2001, “transport capacity” forecast, is at odds with statements in trunk forecasting guidelines and other provisions of Verizon’s CLEC Handbook. Those provisions indicate that initial trunking forecasts are required at least 6 months in advance of the trunk activation date, and that such forecasts are used to help Verizon design and build its interconnection network.

¹³While Staff takes a fairly dim view of Mr. Lesser’s “overestimate,” his testimony is particularly credible for several reasons. First, admitting that he overstated NCC’s forecast is, to some degree: a statement against NCC’s own interests and such statements tend to be more credible -- both logically and as an evidentiary matter. See W. Va. R. Evid. 804(b)(3). Second, Mr. Lesser must have known that Verizon intended to construct dedicated entrance facilities prior to March 1, 2001, in order to have *my* reason to overstate NCC’s forecast to avoid an undersized entrance facility. Third, Mr. Lesser’s statement leads one to wonder what NCC’s forecast would have been if there was still a possibility of interconnecting at the 405 MUX -- with interconnection there foreclosed, Mr. Lesser had no reason to forecast that his traffic demands were within the 405 MUX’s available capacity.

Finally, there is one other reason to doubt Mr. Albert's assertion that Verizon did not decide the interconnection issue for YCC until after receiving the March 1, 2001, forecast: He did not make the decision. The decision was made by either or both Ms. Robinson and Mr. D'Marino. NCC Exh. 3F; Tr. II, at 238. Neither Ms. Robinson nor, apparently, Mr. D'Marino reported to Mr. Albert. Tr. III, at 183-184. Nor was Mr. Albert involved in the interconnection process with NCC until July 2001, when he became involved in the "interim" solution. Tr. III, at 184-185.

The fact is, Verizon chose not to prefile testimony on behalf of either Ms. Robinson or Mr. D'Marino, and they were not available for cross-examination. It is Verizon's responsibility to rebut evidence produced by the complainant with evidence of its own, that overcomes any conclusions or inferences that may be drawn from the complainant's evidence. The only Verizon witness with personal knowledge of what Verizon decided, and when, was Ms. McKernan -- and she fixed January 24, 2001, as *the* date Verizon decided that dedicated facilities were required to interconnect with NCC on January 24, 2001.

In short, Verizon's assertion that it did not make its decision to build out dedicated entrance facilities, rather than interconnect at the 405 MUX, until after it received NCC's "transport capacity" forecast is a smokescreen, an after-the-fact rationalization of what Verizon decided not to do at the end of January 2001. Accordingly, it should be rejected

- e. **NCC's January 2001, trunking estimate sufficed to permit the interconnection it requested.**

It is hard to see why NCC's January 17 and 25, 2001, email advising Verizon that

needed only 33 T-1s to satisfy its trunking requirements for the next 6 months did not substantially provide the information sought in Verizon's CLEC Handbook. See NCC Exh. 3C-005; NCC Exh. C-008. As previously discussed, all the remaining information Verizon needed to complete an "A Location/Z Location" trunking forecast was network information in its possession. Moreover, if there was still information Verizon needed, certainly a couple follow up questions could have elicited it from NCC. For example, Verizon could have simply asked NCC whether the 33 T-1s included NCC's trunking requirements for the 11 categories of trunks set forth in Section 8.3.1.4 of the CLEC Handbook.¹⁴

3, Lack of a 2-year forecast did not prevent Verizon from interconnecting with NCC elsewhere.

Finally, the record established that lack of a 2-year trunking forecast did not prevent Verizon from interconnecting with NCC at a loop facility in Illinois. In that state, Verizon apparently interconnected at a loop facility with nothing more than a December 7, 2001, email from NCC, advising that NCC would have "very little local traffic" and that initially, it would "only order two T1s". NCC Exh. 3C-032. NCC provided even less information regarding the "A Location/Z Location" trunking forecast than it did in West Virginia. And it was even less clear in what its ultimate trunking needs were for the foreseeable future than it was in West

¹⁴Verizon claims that it had a right to rely on NCC's March 1, 2001, forecast and did not question its accuracy. However, Staff finds it curious that no one at Verizon questioned the March 1, 2001, forecast, since it amounted to more than a 300% increase in traffic demand from NCC's initial estimate, submitted little more than a month before. The increase in traffic demand should have seemed a little suspect in light of the fact that NCC was not yet even interconnected and had not begun operating in West Virginia.

Virginia – noting that it needed “less than [sic] twenty-eight T1’s,” that NCC “would be satisfied if [it] had ten T1’s,” and that it could “get by with four T1’s”. *Id.* Yet with less information, Verizon interconnected with NCC – at a loop facility no less. The big difference, of course, was that NCC sued Verizon quickly when the company first balked at interconnecting. *See* NCC Post Hearing Exh. .4.

C. Conclusion.

For all the foregoing reasons, the Commission should conclude that Verizon violated its obligations under Section 251(c)(2) of the Act and 47 C.F.R§ 51.305, as well as Telephone Rule 15.2.a, by refusing to interconnect at any technically feasible point requested by NCC.

IV. DESPITE ASSERTIONS TO THE CONTRARY, VERIZON APPEARS TO HAVE A POLICY DISALLOWING CLEC INTERCONNECTION AT LOOP FACILITIES, IN VIOLATION OF ITS OBLIGATIONS UNDER SECTION 252 OF THE ACT.

One of the most bitterly contested issues in this proceeding was the existence or non-existence of Verizon policy regarding interconnection with CLECs. There *are* actually 2, interrelated policies involved: first, whether Verizon requires CLECs to interconnect with it using dedicated entrance facilities; and second, whether Verizon will interconnect with CLECs at shared loop facilities

Verizon insists that no such policy exists, and that any reference to such a policy was a poor choice of words by NCC’s account manager, Ms. McKernan. NCC insists that Ms McKernan’s use of the term “policy” was no mistake and that, in fact, Verizon will not

interconnect with CLECs at shared loop Facilities as a matter of course. Staff believes that the weight of the evidence establishes that such a policy, or at least practice, exists and that Verizon's claims otherwise are simply not credible. This policy or practice violates its obligations under Sections 251 and 252 of the Act, the FCC's regulations, as well as W. Va. Code § 24-2-7(a) and Telephone Rule 15.2.a.

A. The Record Supports NCC's Claim Of An Unlawful Interconnection Policy Within Verizon.

NCC introduced clear and convincing evidence that Verizon applied, or continues to apply, a corporate policy that it will not interconnect with CLECs at loop facilities. This evidence is particularly damning in light of the fact that most of it comes from Verizon itself.

First, in numerous emails to NCC regarding its interconnection requests in West Virginia, Illinois and New York, Verizon states – unequivocally – the NCC cannot interconnect at loop facilities. In West Virginia, Ms. McKernan states, on July 3, 2001, that:

It *was* on that [January 2001] call that we determined you need to build an Entrance Facility because you could not use a non-wholesale marker entrance.

NCC Exh. 3C-009. Later, with regard to NCC interconnecting with Verizon in Illinois, Ms. McKernan states, on December 13, 2001, that:

It took a bit of investigating to get to the Verizon West Policy on terminating interconnection trunks on Enterprise Facilities. Unfortunately, the West policy is the same as the east, as you can see in the message below. . . . We will not terminate interconnection *trunks* on a retail/enterprise facility. . . . I hope this information will assist you in making a decision on interconnecting in Illinois.¹⁵

¹⁵Apparently the email did assist NCC in ~~making~~ its decision in Illinois because it filed a complaint against Verizon with the state commission a few weeks later. NCC Post-

NCC Exh. 3C-033. And again: in New York, on December 27, 1991, Ms. McKernan writes:

The ~~CLL~~ code you provided, NYCMNYWHW11 is a shared mux and cannot be used for wholesale services.

NCC Exh. 3C-031. Three states, three requests, three strikes on NCC's interconnection requests – all over the course of a year (counting the statements made to NCC during the January 2001, conference call)

The Illinois email chain is particularly damaging to Verizon. Ms. McKernan attached a string of internal emails within Verizon regarding its “policy”. In the first internal email, addressed to Candy Thompson,¹⁶ dated December 11, 2001, Ms. McKernan notes that “Todd Lesser has a question about Verizon’s policy on entrance facilities” in Illinois, “would you please take a look at the bolded paragraph below and advise me on [Verizon’s] policy in Illinois”. NCC Exh. 3C-035. The bolded paragraph is apparently part of an earlier email sent by Mr. Lesser to Ms. McKernan. Ms. Thompson then forwarded the question to 2 other Verizon employees, Denise Monte and Charles Bartholomew, asking either of them to respond to NCC’s “concerns regarding entrance facility requirements in Illinois”. *Id.* In response, Mr. Bartholomew wrote Ms. McKernan the same day, December 11, 2001, to advise: “VZWest does not require a fiber build in order to interconnect. CLEC’s may use leased facilities, collocation or fiber”. NCC Exh. 3C-034

Apparently, Ms. McKernan was not clear on Mr Bartholomew’s reply, because she

Hearing Exh. A.

¹⁶Ms. Thompson is indicated as the “Manager-Technical Support, Verizon Wholesale Services West”. NCC Exh. 3C-035.

emailed a clarifying question to him on December 12, 2001, asking:

This customer is interested in using a existing enterprise services mux at the location. Would we be able to place the trunks on that type of facility? Verizon East has a policy against such an arrangement

NCC Exh. 3C-033. The next day, Mr. Bartholomew replied, advising Ms. McKernan that: “We received word from Product Management that the Verizon West Policy is the same as the east. The CLEC may not terminate interconnection facilities on a retail facility”. Id. Mr. Bartholomew copied Ms. Thompson, Ms. Monte and another Verizon employee, Kathryn J. Allison, on his emails to Ms. McKernan.

B. Verizon’s “Evidence“ That No Policy Exists Is Simply Not Credible.

Ms. McKernan claims that she mistakenly used the “term” policy in her emails to Mr. Lesser. and to other Verizon employees. Tr. II, at 223. Ms. McKernan claims that she initiated the use of the term, in order to *make* it sound more “important” to Mr. Lesser. Tr. II, at 223, 235. With all respect to Ms. McKernan, Staff is unconvinced.

For one thing, it appears that Ms. McKernan first used the term “policy” in internal email to Ms. Thompson -- not in order to give Mr. Lesser a sense of the term’s importance when with him. NCC Exh. 3C-035. Moreover, at no time during these internal Verizon email exchanges did any of the participants -- including at least 3 technical support persons with Verizon -- object to use of the term “policy”. Ms. McKernan suggests that the other Verizon employees simply “parroted” her mistaken use of the term “policy”. Tr. II, at 224-225. Staff doubts it. It is hard to believe none of the technical people failed to raise a “red flag” and disabuse Ms. McKernan of her mistaken use of the term “policy,” if there were not; in fact.

such a policy..

Moreover, other evidence in the record suggests that Ms. McKernan was not mistaken in using the term "policy" to describe Verizon's position regarding NCC's interconnection requests. To start, there is Ms. McKernan's Maryland affidavit in which she states, unequivocally, that Verizon's technical support advised NCC that "Verizon uses only dedicated entrance facilities" for interconnection. NCC Exh. F, ¶5. This affidavit was prepared – for litigation in Maryland involving issues similar to those in this proceeding – 2 months before the Illinois emails.

There is also Verizon's CLEC Handbook that at least implies that Verizon requires trunking forecasts from new entrants seeking to interconnect, at least 6 months in advance of trunk activation, in order to design and build the necessary entrance facilities. Staff's inference, interestingly, is also picked up in the Checklist Declaration filed by Verizon-WV in support of its petition for a Section 271 determination by the Commission in Case No. 02-0809-T-P. There, Verizon states

Forecasts of CLEC demand for local interconnection trunking are an integral part of the interconnection process in West Virginia. The process calls for CLECs to project trunk requirements six months in advance of the first forecasted trunk service date. *This six-month lead-time allows Verizon WV to plan, engineer and construct trunk network switching infrastructure in anticipation of aggregated trunk demands.*

Checklist Declaration, Case No. 02-0809-T-P, ¶43 (filed June 11, 2002)(emphasis added)

Finally, there was the testimony of Verizon's witness panel in the Maryland proceeding involving Core Communications. NCC Exh. K, at 24-23; Tr. III, at 124-130, 140-147. In that

testimony, as Mr. Albert admits – the Verizon witnesses (employees of Verizon Services Corp., just like Mr. Albert), use the present tense to state that Verizon MD does not interconnect at loop facilities.

It is only recently, and presumably as a result of the litigation initiated by NCC, that Ms. McKernan has retracted her use of the term “policy” or her unequivocal statements that Verizon uses “only dedicated entrance facilities” for installing interconnection *trunks*. Ms. McKernan’s first retraction of the term “policy” came in a September 23, 2002, email to NCC regarding interconnection in New York. NCC Exh. 3C-048. It is worth noting that Ms. McKernan’s email was sent just 3 days after her prepared direct testimony was filed in this proceeding. See Venzon Exh. 2.

For the first time, at the hearing: Ms. McKernan also attempted to explain that Mr. Bartholomew was confused by her use of the term “policy,” and that he thought she was referring to “putting an interconnection *trunk* on an actual UNE type of retail service”. Tr. II, at 285-286. Putting aside the oxymoron of “UNE type of retail service,”¹⁷ the bottom line is that, if Mr. Bartholomew misunderstood Ms. McKernan on a subject clearly as important as the existence of a policy pursuant to which Venzon will not interconnect with CLECs, Verizon had an obligation to put his testimony in the record. Regardless of whether counsel’s questions “opened” the issue of Mr. Bartholomew’s state of mind, the fact remains that Ms.

¹⁷“In Staff’s experience, Verizon refers to UNEs as wholesale services – network elements that are provided to CLECs. Retail services are those services and facilities that Verizon provides to its end-user customers. So *the* phrase, “actual UNE type of retail service” is, for all intents and purposes, gibberish.

McKernan's testimony is rank hearsay and should be accorded little weight by the Commission.

And finally, while its past dealings with Mr. Albert have earned him Staff's respect, in this instance, at least, Staff does not put great stock in Mr. Albert's testimony that Verizon's engineers make their interconnection determinations on a case by case basis and that this proves there is no corporate policy. Verizon Exh. 4.4, at 2. Mr. Albert admitted that he does not establish corporate policy for network engineering within Verizon. Moreover, there are few written policies in Verizon's engineering department. Tr. III, at 191-192. Furthermore, Mr. Albert admitted that the technical support personnel who apparently advised NCC that Verizon would not interconnect at loop facilities, in both Illinois and West Virginia, do not report to him. Tr. III, at 183-184.

C. Conclusion.

For all the foregoing reasons, the Commission should conclude that Verizon has adopted or applied a policy against interconnecting with CLECs at loop facilities, even where technically feasible, in violation of Section 251(c)(2) of Act, as well as W. Va. Code § 24-2-7(a) and Telephone Rule 15.2.a. The Commission should direct that Verizon immediately cease applying any such policy and interconnect in a manner consistent with its obligations under the Act. The Commission should direct Verizon henceforth comply with its obligations to interconnect at technically feasible points, in accordance with its obligations under Sections 251 and 252 of the Act, and the Commission's rules, or be subject to penalties under Chapter 24 of the W. Va. Code.

IV. VERIZON'S ACTIONS RELATING TO NCC'S INTERCONNECTION REQUESTS MATERIALLY HARMED NCC.

During this proceeding, much was made of the issue whether NCC would have been entitled to reciprocal compensation from Verizon-WV for local traffic terminating to NCC's customers. NCC apparently came to West Virginia to provide service to an Internet service provider (ISP) – Kanawha Valley Internet – that had become dissatisfied with its service from Verizon. Tr. I, at 57-58. There was considerable debate whether NCC would have been able to reap a windfall in reciprocal compensation for traffic originating on Verizon's network that NCC terminated to its ISP customer, either under the FCC's Intercarrier Compensation Order¹⁹ or the Commission's order dealing with reciprocal compensation for Internet-bound local traffic.¹⁹

In Staff's opinion, the issue of whether and how much reciprocal compensation NCC would have earned if it had been able to interconnect in January 2001, goes to the degree of harm -- not the issue whether NCC was harmed. There is no question that NCC was seeking, without success, to commence operations in West Virginia for over a year, and that it took this long to opt in to a standard ICA and get interconnected with Verizon's network. Verizon does not dispute NCC's claim that it had at least 1 customer, a large ISP, that it has not billed for quite some time because it has been unable to provide service to that ISP. Tr. I, 118-119, 123.

““; Order on Remand and Report and Order,” I/M/O implementation of the local competition provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, FCC 01-131 (rel. April 27, 2001), ¶¶ 78-79 (Intercarrier Compensation Order).

¹⁹“Commission Order,” Bell Atlantic - WV, Case No. 00-0426-T-P (Oct. 19, 1999).

Similarly, Verizon does not dispute NCC's claim that it lost a medical services provider with 500 lines to another carrier – namely Verizon – when it could not obtain service from NCC. NCC Exh. 3C-015. Verizon cannot seriously dispute that NCC would have at least earned some revenue in West Virginia had NCC gotten an ICA executed, filed and approved promptly, as Verizon itself suggested should have been the case; and had NCC established interconnected at the 405 MUX in short order – as was clearly feasible. And finally, there can be no doubt that NCC has incurred very substantial costs litigating its claims against Verizon.

The Commission cannot award damages, even if those damages were calculable – something Staff has not undertaken to do. See Dierkes v. Wheeling Power Company, Case No. 93-0917-E-C (Feb. 8, 1994); see also Carter v. Willis, 117 S.E.2d 594 (W.Va. 1960). However, the Commission should take into account the harm NCC has suffered in attempting to enter the local market in West Virginia in fashioning appropriate relief

V. VERIZON SHOULD BE REQUIRED TO PROVIDE ROUTING TO NCC'S 555 NUMBERS OVER LOCAL INTERCONNECTION TRUNKS.

At the outset, Staff notes that this is apparently an issue of first impression. Neither party cited the Commission to any precedent, either at the state or federal level. Nor was Staff able to find such precedent in its own, independent legal research. Moreover, the industry guidelines applicable to routing for 555 traffic leave it to state commissions to determine whether such calls are local or regional.

NCC requests the Commission to direct Verizon-WV to route calls to 555-xxxx numbers assigned to NCC, or its customers, as local traffic – in other words, over local

interconnection trunks from Verizon's customers to NCC's switch. Verizon-WV does not object to routing calls from its customers to NCC's 555 numbers; but objects to routing such calls over the local interconnection trunks. Instead, Verizon-WV requests that the Commission rule that such calls be routed to NCC's 555 numbers over interexchange, access trunks.

Based on its review of the record, Staff recommends that the Commission rule in favor of NCC on this issue -- accordingly directing Verizon-WV to route calls to NCC's 555 numbers -- at least those serving ISPs -- over its local interconnection trunks **with** NCC. The Commission should direct Verizon-WV to route traffic to NCC's 555 numbers over local interconnection trunks for the following reasons: (1) Verizon-WV has established, via Commission-approved tariff, that it treats calls to 555 numbers assigned to ISPs as local calls; (2) Verizon-WV is obligated to provide access to UNEs and services in a non-discriminatory manner -- meaning it must provide the same or similar UNEs or services to CLECs, equal in quality to the facilities and services that it provides to its own customers; (3) the manner in which Verizon-WV's customers calls to NCC's 555 numbers are carried is no different than the manner in which other local calls are carried to NCC's switch; (4) Verizon-WV is, in fact, not carrying such traffic for free -- it is being compensated by its own customers' rates for local service; (5) there should be no concern about reciprocal compensation "arbitrage" since ~~an~~ calls to ISPs served by NCC's 555 numbers are no longer subject to reciprocal compensation; and (6) NCC's network is burdened by calls from Verizon-WV's customers to its 555 numbers, for which NCC will not receive reciprocal compensation, and requiring it to

pay additional fees associated with routing such calls over interexchange access trunks doubly taxes NCC.

.4. Verizon-WV Itself Treats 555 Traffic As Local.

Verizon, by tariff, treats 555 (as well as 500) service as local service. Staff Cross Exh. 3 & 4; Tr. III, at 41-44, 57-51. The tariff also makes it clear that calls to either 500 or 555 numbers using IntelliLinQ Enhanced ISDN PRI service can only be made within the LATA. Staff Cross Exh. 3. In other words, a Verizon customer can dial a 555 number assigned either to Verizon or another Verizon customer, and that call will be treated as local as long as it originates and terminates within the same LATA.

Staff believes the same restriction should apply to any traffic from Verizon being routed to NCC's 555 numbers. So long as the 555 number is served by an NCC switch located in the same LATA as the Verizon-WV customer making the call: the call should be carried over Verizon-WV's local interconnection *trunks*.

Nor does Staff believe there would be any technical reason why Verizon-WV could not block calls from its customers originating in one LATA from being transported over local interconnection *trunks* to an NCC 555 number located in another LATA. In fact, as Staff understands the switching process, Verizon's switch at the subtending Access Tandem can recognize the serving switch destination of a call to a CLEC's 555 number in another LATA and would be able to route that call immediately to an interexchange access *trunk*. The same cannot necessarily be said for 500 numbers, incidentally? which is why Staff would have supported Verizon's position with respect to routing calls to such numbers over interexchange

access trunks – had NCC not agreed to do so prior to hearing.

Since Verizon offers 555 service as local service in West Virginia, and since the industry guidelines do not mandate that such calls be routed over interexchange access *trunks*, it is obligated to route calls to CLECs' 555 numbers in the same fashion.

B. Transporting 555 Traffic Is Really No Different Than Transporting Ordinary Local Traffic.

Verizon-WV asserts that it “should not be required to haul NCC’s 555 traffic for free” as the basis for asserting that the Commission should direct that such traffic be routed over interexchange access *trunks*. This assertion is based on the fact that Verizon-WV may have to transport calls all the way from Lewisburg, back to Charleston, just to deliver those calls to an NCC customer with a 555 number located in Charleston. If this *is the* basis for Verizon-WV’s position, Staff is left scratching its head *to* see where this is any different than the manner in which ordinary local traffic is handled.

In the Commission’s decision arbitrating unresolved issues relating to what became the MCI_{Im} ICA, the Commission rejecting Verizon-WV’s arguments that MCI_{Im} should be required to establish points of interconnection (POIs) *at* each tandem in a LAT.⁴ “Commission Order,” MCI_{Im} Access, Case No. 97-12 10-T-PC (Jan. 13, 1998), at 9-10. The Commission concluded that the Act does not allow ILECs to impose additional interconnection costs and obligations on CLECs, by forcing them to interconnect at more than one POI in a LATA. *Id.* This provision of the Commission’s arbitration decision was incorporated in the MCI_{Im} ICA, opted into by NCC. MCI_{Im} ICA, Attachment IV, Section 1.2.

Under the Commission's ruling in the MCI arbitration, and in accordance with its ICA, NCC can pick one POI within the Charleston LATA, and thereby require Verizon-WV to haul its customers' traffic from anywhere within the Charleston LATA to that one POI, for termination on NCC's network. For local traffic not bound for the Internet, Verizon-WV would also have to pay NCC to terminate its customers' local calls to NCC customers. The quid pro quo, of course, is that CLECs with only one POI must pay correspondingly higher termination charges when their customers call Verizon customers. For example, if an NCC customer in Lewisburg sought to complete a local call to a Verizon-WV customer in Lewisburg, NCC would have to haul the call all the way back to its Charleston POI, either over its own trunks or more likely trunks that it leases from Verizon-WV, and then pay Verizon-WV to terminate that call – at the higher, access tandem rate.

With one very big exception, a call from a Verizon-WV customer to an NCC customer with a 555 number is really no different than a local call *to* an NCC customer without a 555 number. It does not matter where the NCC customer is – Verizon-WV will still have *to* haul the call to NCC's POI in Charleston in order *to* have it completed. And Verizon-WV will still have to pay NCC to terminate the call.

But here is where the big exception becomes applicable -- indeed, becomes critical. Since 555 numbers are assigned by NANPA on an individual number basis, they are a very rare commodity indeed (there are, at most, 10,000 555 numbers available in the 304 NPA). ISPs, and others with large volumes of incoming traffic, seek 555 numbers in order to have them treated as non-toll calls. In fact, NCC testified that its customer with a 555 number was an ISP.

On April 4, 2001, the FCC in essence eliminated Verizon-WV's obligation to pay NCC to terminate calls to its ISPs – by eliminating future reciprocal compensation obligations for traffic terminating to new ISPs. and by eliminating reciprocal compensation for existing ISPs over a transition period. “Order on Remand and Report and Order.” L/M/O implementation of the local competition provisions in the Telecommunications Act of 1996, CC Docket No. 96-98. FCC 01-131 (rel. April 27, 2001), ¶¶78-79 (Intermarried Compensation Order).

In other words, although Verizon-WV may have to transport calls from its Lewisburg customer to NCC's Charleston POI, it will not have to pay NCC any terminating charges to complete the call. if the holder of NCC's 555 number is an ISP. And this is despite the fact that NCC actually has costs associated with providing service to that ISP – for example, calls to ISPs tie-up NCC's available ports, and calls to ISPs take up capacity on NCC's own trunks if the calls have to be transported any distance.

Thus, in the scenario in which the holder of NCC's 555 number is an ISP, Verizon's argument that traffic to that number must be carried on interconnection access *trunks* imposes a double cost on NCC, and a significant windfall for Verizon-WV. First, NCC is not going to be paid any reciprocal compensation for terminating *the Verizon-WV* customer's call to its ISP -- despite the fact that NCC has real costs associated with terminating such calls. And second, NCC is going to have to pay Verizon-WV to haul such calls over its *interexchange* trunks. Verizon-WV's position, if allowed to remain in effect by the Commission, virtually ensures that no CLEC will be able to offer a service that competes with Verizon's IntelliLinQ service for ISPs.